

Resumé: The legal institution of making a copy for personal use in the information society

The aim of my thesis is to analyze the traditional institute of continental copyright law, the legal institution of making a copy for personal use, regarding new technologies of the information society. The development of electronic communication networks, especially Internet, and continuous digitalization introduced a massive dematerialization of copyrighted works usage. Consequently, this development brings new ways of distribution of copyrighted works from authors to consumers of their works, related also to the exceptions and limitations from copyright. Therefore, the exception impacts on the copyright and demands are highly increased. Inevitably, the copyright law must reflect these changes in order to be able to fulfill its purpose. This thesis asks a question: “Is the possibility of making a copy for personal use according to contemporary legislation still justifiable?” I chose the topic because of dubiousness in the application of copyright law norms dealing with the usage of the copyrighted works on the Internet network, especially if we are talking about this exception. I would also like to pay attention to the so called three-step test, central point of copyright protection, and a way to decide if possibility of making a copy for personal use is allowed or not allowed.

The thesis is divided into seven chapters. Every chapter deals with a specific aspect of a complex view on the institution of making a copy for personal use. In the concluding chapter, I give examples of common ways of copyrighted works usage including the allowance by application of three-step test.

First chapter introduces the legal institution of making a copy for personal use within the context of Czech legislation, defines and explains its basic conceptual aspects.

Second chapter examines the Anglo-American and continental copyright law system. It is focused on the exceptions from and limitations of the copyright. Thus, the influence of both systems on contemporary international law is outlined. Additionally, the traditional reasons for justification of making a copy for personal use exception are examined. Also, the reasons which may justify this exception in the future are outlined.

The third chapter defines the term “technical protection measures” and sets the limitation

of their applicability. In addition, the rights protection given by the Information Directive is discussed. The influence of technical protection measures and justification of this influence on possibility of application of exception from the right of reproduction for personal use. Moreover, attention is paid to the DRM technology and its possible violation of users privacy.

The fourth chapter is describing the circumstances of origin of concept of copyright levies, its premises and principle. Consequently, it examines the new challenges arising from the widening of digital technologies. Additionally, adaptability of this concept to these new conditions is analyzed too. Moreover, this chapter introduces some possible solutions for described problems.

The fifth chapter deals generally with the three-step test. The chapter describes the incorporation of the test into the international and EU copyright law. It outlines the activities of the Dispute Settlement Body (DSB) in WTO and European Court of Justice (ECJ) involving the three-step test. The obligation for DSB and ECJ to apply the test is examined and particular cases of its usage are described. Next, two diametrically opposed views on the interpretation of the test (every condition judged separately or all of them judged together) and the influence of both views on the contemporary interpretation of the test are introduced. Additionally, the suitability of the test for the duty given by the copyright law is discussed.

The sixth chapter analyzes the conditions of the three-step test one by one. Hopefully, it gives the interpretation of the test respecting the international agreements and the purpose of copyright law, i.e., a balance among different interest in the process of creating and using of copyrighted works. I have tried to give wide interpretation, applicable also for judging of other exceptions and limitations of copyright. Nevertheless, the interpretation is still focused on the exception from the right of reproduction for personal use.

The seventh chapter introduces the influence of technology development in the last few decades and digitalization of the information environment on the possibilities of application of discussed exception. It analyzes the influence of this development on the rights and interests of authors. Finally, three particular and representative examples of ways of usage of the work involving the discussed exception are judged using the three-step test.

The main goal of the thesis was to answer the questions: “Is the legal institution of making a copy for personal needs still justifiable in the modern information society and digital

environment? Is the wide exercise of the exception respecting the copyright law?" The answer depends on the particular way of usage of copyrighted work considering all circumstances. Nevertheless, I conclude that the making of a copy for personal use is no longer respecting the copyright law in most cases of actions, especially actions involving the Internet. The reason for my conclusion lies in insufficient public interest justifying the exception: the benefits would be much smaller than the harm done to the justified interest of right-holders. This harm can be no longer repaired by the system of copyright levies, because it is not possible to always find a compromise between interests of right-holders and third parties, not involved in the taking advantage of exception, but with the obligation to pay the copyright levies. According to these facts, it is necessary to leave the system of copyright levies and consider the particular actions to be in contradiction with copyright in some of the cases, especially considering some of tolled devices.